



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1994

Mr. Steve Aragón
Texas Department of Human Services
Office of General Counsel
P.O. Box 149030
Austin, Texas 78714-9030

OR94-211

Dear Mr Aragón:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24837.

The Texas Department of Human Services (the "department") received several open records requests for information pertaining to investigations by the department and the Austin Police Department (the "APD") into the alleged misuse of state-owned equipment by James A. Bunch in connection with his allegedly operating a prostitution ring. You have submitted to this office for review as representative of the requested information the following documents:

- 1) A copy of the report of the department's internal investigation of this matter;
- 2) A portion of the "station detail logs" which list all telephone numbers called from a particular work station and the duration of those calls;
- 3) A sample of personal correspondence which was recovered from the department's computer equipment;
- 4) A sample of documents relating to the operation of an alleged prostitution business which were recovered from the department's computer equipment;

- 5) A portion of documents that were recovered from the department's computer equipment which allegedly list clients of the prostitution business; and
- 6) A portion of a document recovered from the department's computer equipment which allegedly lists employees of the prostitution business.

You contend that the requested records come under the protection of, *inter alia*, section 552.108 of the Government Code.¹

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or *prosecution* of crime
[Emphasis added.]

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). This office has previously held that evidence obtained at the scene of a crime is presumptively protected by section 552.108 during the pendency of an investigation and prior to prosecution. Attorney General Opinion MW-446 (1982) (and authorities cited therein). This is true even where a non-law enforcement agency is the custodian of the records at issue. Attorney General Opinion MW-575 (1982) (when a reasonable probability for filing criminal charges exists, even a non-law enforcement agency may claim the § 552.108 exception); *see, e.g.*, Open Records Decision Nos. 272 (1981) at 1; 183 (1978) at 5.

You explain that all of the records that the department maintains in connection with this matter have been handed over to the APD during the criminal investigation of this matter. The APD, through its legal advisor, has requested that these records not be released at this time. Although the APD has publicly announced that its investigation has concluded, we note that criminal charges are currently pending in connection with

¹Because we resolve your request on the basis of section 552.108, we need not discuss at this time the applicability of the other exceptions you raise.

this matter. Because the prosecution of this matter has not concluded, the department may withhold the requested records at this time² pursuant to section 552.108.³

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 24837
ID# 25058
ID# 25102
ID# 25281

Enclosures: Submitted documents

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²This ruling does not address the extent to which the department may continue to withhold these records after the criminal trials stemming from this case have ended.

³The requestor's contention that the records at issue are public information in accordance with Open Records Letter OR93-466 (1993) is without merit. In OR93-466, this office determined that 1) Treasury Department records subpoenaed by the Travis County Grand Jury were not exempt from the Open Records Act for purposes of section 552.003(b) of the Government Code if the Treasury Department maintained copies of those records while the originals were in the hands of the grand jury and 2) such records could be withheld from the public only if one of the act's exceptions applied to the information. Because the Treasury Department did not raise any of the act's exceptions, this office concluded that those records must be released. In this instance, however, the department does not contend that its records are not subject to the act because they were transferred to the APD, but merely that the records come under the protection of section 552.108. Because the department has carried its burden in demonstrating how section 552.108 applies to the information, these records may be withheld at this time.

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